tendent of industries in Bengal. He was dismissed without cause. By the terms of the contract it was not to be terminated except for misconduct. *Held*, that the plaintiff has no cause of action. *Denning* v. *Secretary of State for India in Council*, 37 T. L. R. 138 (K. B.).

It is settled in England that servants of the Crown can be dismissed at pleasure. *Shenton* v. *Smith*, [1895] A. C. 229; *Dunn* v. *The Queen*, [1896] 1 Q. B. 116. A special contract does not alter this. *Hales* v. *The King*, 34 T. L. R. 589. However, the right can be abrogated by statute. *Gould* v. *Stuart*, [1896] A. C. 575. In the United States a distinction is taken between public officers and public employees. In the absence of special provisions in state constitutions the former can be removed at any time. An office is not property. *Taylor* v. *Beckham*, 178 U. S. 548; *Conner* v. *The Mayor*, 5 N. Y. 285; *Mial* v. *Ellington*, 134 N. C. 131, 46 S. E. 961, overruling *Hoke* v. *Henderson*, 4 Dev. (N. C.) 1. And designation to office does not create a contract right. *Butler* v. *Pennsylvania*, 10 How. (U. S.) 402; *Jones, Purvis & Co.* v. *Hobbs*, 4 Baxt. (Tenn.) 113; see COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 388. On the other hand, a public employee is protected from arbitrary dismissal by the contract clause. *Hall* v. *Wisconsin*, 103 U. S. 5. There is considerable confusion as to the distinction in any particular case. See *David* v. *Portland Water Committee*, 14 Ore. 98, 117; *cf. In re Corliss*, 11 R. I. 638. All offices must be created either by the constitution or the legislature. *United States* v. *Maurice*, 2 Brock. (U. S.) 96; *Miller* v. *Warner*, 42 App. Div. 208, 59 N. Y. Supp. 956; *State* v. *Spaulding*, 102 Ia. 639, 72 N. W. 288. But the converse is not true; a legislative act may create a mere employment. *Bunn* v. *People*, 45 Ill. 397. The criterion mostly stressed is whether the individual performs some governmental function. See *McArdle* v. *Jersey City*, 66 N. J. L. 590, 598, 49 Atl. 1013, 1016; MECHEM, PUBLIC OFFICERS AND OFFICES, 1 ed., § 4. The scope of such a definition has perhaps not always been realized. See Eugene Wambaugh, "The Present Scope of Government," 20 AMER. BAR ASS. REP. 307, 81 ATLANTIC MONTHLY, 120. At any rate, the plaintiff in the principal case would probably be considered a public officer, so a like result would be reached in this country.

PUBLIC SERVICE COMPANIES — REGULATION OF PUBLIC SERVICE COMPANIES — POWER OF COMMISSION TO FIX RATES WHEN A STATUTORY MAXIMUM RATE HAS BEEN HELD CONFISCATORY. — The New York Public Service Commission "may, by order, fix the maximum price of gas or electricity not exceeding that fixed by statute. . . ." (N. Y. L. 1910, c. 480, § 72.) The courts having declared the statutory maximum confiscatory as to the defendant, the defendant obtained an order from the commission fixing higher rates. The plaintiff, a consumer, claimed that the order was void as beyond the power of the commission and sought to enjoin the defendant from enforcing those rates. *Held*, that an injunction *pendente lite* be granted. *Morrell* v. *Brooklyn Borough Gas Co.*, 113 Misc. 65, 184 N. Y. Supp. 651.

The decisive question in this case is whether the Public Service Commission Law confers on the commission a limited power to fix rates for gas or a general power with a limitation. See N. Y. L. 1910, c. 480, art. 4. The court takes the former interpretation, that the power is only to fix rates less than the statutory maximum. See *Brooklyn Borough Gas Co.* v. *Public Service Commission*, 17 State Dept. Rep. (N. Y.) 81, 116. It follows that when all such rates are invalid, as where the statutory maximum has been found confiscatory, the commission has no power to fix rates at all. This leaves the anomaly of one company, freed from all expert administrative supervision, fixing its own rates on common-law principles. Higher rates previously fixed by statute or the commission are repealed by a statute fixing a lower maximum. See *Brooklyn Borough Gas Co.* v. *Public Service Commission*, *supra*, 115, 119; *Matter of*

Brooklyn Borough Gas Co., 18 State Dept. Rep. (N. Y.) 70, 86; *contra, Public Service Commission* v. *Brooklyn Borough Gas Co.*, 104 Misc. 315, 171 N. Y. Supp. 937. The *dictum* in the principal case that the court will fix rates cannot be supported. *Bronx Gas & Electric Co.* v. *Public Service Commission*, 108 Misc. 180, 178 N. Y. Supp. 172; see *Bronx Gas & Electric Co.* v. *Public Service Commission*, 190 App. Div. 13, 20, 180 N. Y. Supp. 38, 44. And the ingenious decree of Judge Learned Hand in a similar situation impounding the excess above the invalid statutory maximum to be distributed retroactively according to the new rate to be fixed by the legislature depends of necessity on early legislative action. See *Consolidated Gas Co.* v. *Newton*, 267 Fed. 231, 270. The case commonly relied on by the court as laying down this narrow construction dealt with a rate which no court had found confiscatory. *People ex rel. Municipal Gas Co.* v. *Public Service Commission*, 224 N. Y. 156, 120 N. E. 132. See *Public Service Commission* v. *Brooklyn Borough Gas Co.*, 104 Misc. 315, 328, 171 N. Y. Supp. 937, 944. The more reasonable interpretation of the words of the act as fortified by its whole scheme and purpose would confer a general power of rate regulation subject to a limitation by statute. Then when the limitation is invalid as to any company the commission could still fix reasonable rates for that company under its general power. See *Bronx Gas & Electric Co.* v. *Public Service Commission*, 190 App. Div. 13, 21, 180 N. Y. Supp. 38, 45; *Matter of Brooklyn Borough Gas Co.*, 18 State Dept. Rep. (N. Y.) 70, 83.

SURETYSHIP — SURETY'S DEFENSES — ALTERATION OF SURETY'S CONTRACT BY AMENDING CAUSE OF ACTION. — The plaintiff sued X and the defendant and attached X's property. X gave a bond for the release of the attachment, on which the defendant became surety for the amount of the judgment in case plaintiff recovered "in said action." Plaintiff in fact had no cause of action against X but was the agent of the Y company which did. With X's consent the Y company assigned its claim to plaintiff. Defendant consented to the assignment "without prejudice to any rights against plaintiff." Plaintiff recovered judgment and now sues the defendant as surety on his bond. *Held*, that the defendant is released. *Michelin Tire Co.* v. *Bentel*, 193 Pac. 770 (Cal.).

It is a fundamental proposition that any material variation of a surety's obligation without his consent discharges him. This principle is applicable to sureties on a bond given to release an attachment. If the plaintiff discontinues as to certain defendants while recovering against the others, or if parties plaintiff are added or eliminated in such a way as essentially to alter the surety's liability, he is released. *Andre* v. *Fitzhugh*, 18 Mich. 93; *Furness* v. *Read*, 63 Md. 1; *Quillen* v. *Arnold*, 12 Nev. 234. And if, as in the principal case, the plaintiff substantially amends his cause of action, substituting a good for a bad one, the surety's liability ceases. *Cassidy* v. *Saline Bank*, 7 Ind. Terr. 543, 104 S. W. 829; *Wood* v. *Denny*, 7 Gray (Mass.), 540. But if the alteration is merely one of form, such as a correction of a misdescription of claim, the obligation of the surety continues binding. *Morton* v. *Shaw*, 190 Mass. 554, 77 N. E. 633; *Warren Bros.* v. *Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847. Should the sureties consent to the alteration they are not discharged. *Hellman* v. *City Trust Co.*, 111 App. Div. 879, 98 N. Y. Supp. 51; *Mundy* v. *Stevens*, 61 Fed. 77. The fact that the defendant in the principal case assented to the amended action "without prejudice to any rights" tends to support the court's finding that the consent bound him only as a party in the original suit and did not prevent him from setting up the defense of alteration of his suretyship obligation.

TITLE, OWNERSHIP AND POSSESSION — CHATTELS — RIGHTS OF ADVERSE HOLDER — BANKRUPTCY. — X bought, in good faith, a stolen automobile.